



28 February 2020

File Ref: LAMIA348

Ian Thomson
Special Counsel Governance
Legal Services Unit
Christchurch City Council

Via email: [REDACTED]

Dear Ian

LOCAL AUTHORITIES (MEMBERS' INTERESTS) ACT 1968 – APPLICATION FOR APPROVAL OF CONTRACTS

Thank you for your letter of 24 January 2020 and emails of 14, 21 and 25 February 2020.

We're pleased to hear that Councillor Mauger is proactively managing any potential conflicts that may arise between his family business, and his role as a newly-elected Christchurch City Councillor.

Christchurch City Council (the Council) has sought:

- retrospective approval from the Auditor-General under the Local Authorities (Members' Interests) Act 1968 (the Act) for Councillor Phillip Mauger to be concerned or interested in a contract between the Council and Grounds & Services Limited (GSL) (the head contract), under which payments will be made to Maugers Contracting Limited (MCL) with a value in excess of \$25,000 for the 2019/20 financial year; and
- prior approval from the Auditor-General under the Act for Councillor Mauger to be concerned or interested in a contract between MCL and the Council for the supply of soil.

Local Authorities (Members' Interests) Act 1968 – the disqualification rule

Section 3(1) of the Act provides that a member of a local authority is disqualified from office who is concerned or interested in contracts with their authority under which the total of all payments to be made by or on behalf of the authority exceeds \$25,000 in any financial year (disqualification rule).

The disqualification rule also applies if a member is concerned or in interested in a contract with the authority as a subcontractor, as if it were a contract directly with the authority. In such a case, the \$25,000 limit applies to the value of the subcontract, not the head contract.

Section 3(2) of the Act deems a member to be concerned or interested in a contract made by a local authority with an incorporated company if the member or his (her) spouse or partner singly or between them own, whether directly or through a nominee, 10% or more of the issued capital of the company or of any other company controlling that company.

Section 3(3) of the Act allows the Auditor-General to grant prior or retrospective approval of a member's interest in any contract, which has the effect of suspending the disqualification rule in that case.

Retrospective approval may only be granted if the Auditor-General is satisfied that:

- prior approval would have been granted had it been sought, because it is a “special case”; and
- there is “sufficient special reason” why prior approval was not sought.

Retrospective approval

In this case, the application for retrospective approval relates to a subcontract MCL entered into with GSL to complete earthworks as part of the head contract.

You have advised that:

- The value of the subcontract is \$700,000 (excluding GST).
- Councillor Mauger’s interest in the head contract arises because he has a majority shareholding in MCL (which is his family’s business).

We have decided to grant the approval sought.

Would the Auditor-General have granted prior approval to Councillor Mauger?

You have told us that:

- MCL tendered for the subcontract after the 12 October 2019 local body elections. The subcontract was awarded before the governing body of the new Council began receiving information about the Council’s capital works programme. The Council had no involvement in GSL’s decision to subcontract part of the head contract to MCL (if its tender succeeded).
- Councillor Mauger was not involved in the discussions about or negotiations for the head contract or the Council’s December 2019 decision to award it to GSL. The Council complied with the requirements of the Council’s procurement policy before awarding the head contract to GSL.

Considering the reasons set out in the application and subsequent emails, we are satisfied that this is a “special case” such that prior approval would have been granted, had it been sought. In particular, Councillor Mauger has had no involvement in the decision-making process, and, this is a subcontracting situation where the Council does not control who the head contractor chooses.

Why didn’t the Council obtain prior approval?

You have advised that:

- Prior to the election, Councillor Mauger was advised by our Office that the disqualification rule would not apply to a subcontract MCL had with a company contracted to provide services to a Council-controlled organisation. Given the contract with GSL was also a subcontract, it is likely Councillor Mauger considered it fell within the ambit of the earlier advice.
- Councillor Mauger raised the matter in the course of a discussion with you about potential conflicts of interest, the outcome of which was the letter of 24 January seeking retrospective approval for

the GSL subcontract. You had initially understood that although the subcontract was awarded post-election, it had been tendered for prior to 9 October 2019. In fact MCL was invited to tender on 14 October – after the election but before Mr Mauger was sworn in as a Councillor on 19 October 2019.

In the circumstances, we are satisfied that there is “sufficient special reason” why prior approval was not obtained.

Approval

Under section 3(3)(aa) of the Local Authorities (Members' Interests) Act 1968, the Auditor-General retrospectively approves of Councillor Phillip Mauger being concerned or interested in a contract between Christchurch City Council and Grounds & Services Limited, under which payments totalling \$700,000 (excluding GST) will be made to its subcontractor, Maugers Contracting Limited in the 2019/20 financial year.

This approval is in addition to, and not inclusive of, the statutory \$25,000 limit set out in the Act for the specified year.

This approval does not suspend the normal prohibition on Councillor Mauger discussing or voting on matters (including this matter) in which he has a pecuniary interest.

Prior approval

The application for prior approval relates to a prospective contract between MCL and the Council to supply soil for a Council project. The prospective contract is valued at approximately \$40,000.

At this stage, the Council has approached MCL but has not taken any further steps to engage a contractor to supply the soil.

I understand that you will approach Councillor Mauger and the Council staff to clarify the process they intend to follow before any decision is made. Whether or not approval is sought will be considered at that point and the appropriate steps taken.

On that basis, we will not consider the application for prior approval at this stage. However, please do contact me if you would like to further discuss the process.

I would be grateful if you could inform Councillor Mauger of the contents of this letter.

Yours sincerely

A handwritten signature in blue ink, appearing to be 'M. Davie', enclosed within a hand-drawn blue oval.

Miriam Davie
Senior Solicitor

Copy: Andy Burns, Appointed Auditor